



DONALD L. WOLFE, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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P.O. BOX 1460
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IN REPLY PLEASE

REFER TO FILE: **W-0**

October 31, 2006

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**LOS ANGELES COUNTY WATERWORKS DISTRICTS NOS. 29, MALIBU,
AND 40, ANTELOPE VALLEY
PRODUCT TESTING AGREEMENT WITH PAX WATER TECHNOLOGIES, INC., FOR
TESTING OF WATER-MIXING DEVICES IN WATER TANKS
SUPERVISORIAL DISTRICTS 3 AND 5
3 VOTES**

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY
OF THE LOS ANGELES COUNTY WATERWORKS DISTRICTS NOS. 29, MALIBU,
AND 40, ANTELOPE VALLEY:**

1. Execute the enclosed Product Testing Agreement with PAX Water Technologies, Inc. (PAX), for the installation and performance evaluation of water-mixing devices in three drinking water tanks; two tanks in Waterworks District No. 29, Malibu, and the third tank in Waterworks District No 40, Antelope Valley.
2. Find that the installations and testing of water-mixing devices in the three existing water tanks is categorically exempt from the provisions of the California Environmental Quality Act (CEQA).

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of this action is to evaluate the effectiveness of water-mixing devices in three of the Districts' existing water tanks over a 120-day period. Upon the completion of the testing period, the Districts may purchase the water-mixing devices at an estimated cost of \$75,000 or request that PAX remove the water-mixing devices within ten working days.

Tank water-mixing devices such as the one developed by PAX reduce operation and maintenance costs to improve water circulation in drinking water storage tanks and, therefore, reduce the potential for water quality deterioration in the tanks.

Implementation of Strategic Plan Goals

These actions are consistent with the County Strategic Plan Goals of Service Excellence and Fiscal Responsibility by evaluating the effectiveness of the water-mixing devices prior to their purchase and by providing high quality drinking water to the Districts' customers.

FISCAL IMPACT/FINANCING

There will be no impact to the County's General Fund. PAX will be responsible for the cost of installation, data collection, and, if necessary, removal of the water-mixing devices. The Districts' existing staff will provide access to the tank sites and any historical data that PAX may require to evaluate the effectiveness of its product.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Product Testing Agreement has been reviewed and approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

The CEQA requires public agency decision makers to document and consider the environmental implications of their actions. Installation and testing of water-mixing devices for three of the Districts' existing water storage tanks is categorically exempt pursuant to Class 1 of the Environmental Reporting Procedures and Guidelines adopted by your Board on November 17, 1987, and Section 15301 of the CEQA guidelines.

The Honorable Board of Supervisors
October 31, 2006
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IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no negative impact on current County services or projects during the performance of the recommended services.

CONCLUSION

Please return three adopted copies of this letter and three copies of the fully-executed Product Testing Agreement to Public Works, Waterworks and Sewer Maintenance Division.

Respectfully submitted,

DONALD L. WOLFE
Director of Public Works

KH:ir
BDL2258

Enc.

cc: Chief Administrative Office
County Counsel

PRODUCT TESTING AGREEMENT

THIS PRODUCT TESTING AGREEMENT ("Agreement"), dated this ____ day of June, 2006, by and between **PAX Water Technologies, Inc.**, ("PAX"), a Delaware corporation, having offices at 1615 5th Avenue, San Rafael, California, and **Los Angeles County Waterworks District No. 29, Malibu, and Los Angeles County Waterworks District No. 40, Antelope Valley** (collectively, "Facility Provider" or "Provider"), formed pursuant to Division 16 of the California Water Code, located at 1000 South Fremont Avenue, Alhambra, California, is effective as of the date first above written.

ARTICLE 1 **SCOPE**

1.1 PAX has agreed to provide its product(s) and associated documentation (the "Product Documentation") known as **PAX Water Technologies Potable Water Submersible Mixer**, but excluding all power and power delivery items appurtenant to such product (the products and Product Documentation collectively known as the "Product"), as the same is further described below and in **Exhibit "A"**, attached hereto and made a part hereof, to the Provider's facility located at _____ for a One Hundred Twenty (120) day testing period ("Testing Period"), commencing upon delivery and installation of the Product, unless extended by mutual written agreement of the parties.

1.2 PAX will be responsible, at PAX's sole cost and expense, for installing the Product at three potable water tanks ("Tanks") mutually agreed to by the parties; provided however, that Provider shall be responsible for installing or making all changes to the Tanks (for examples but without limitation, holes in the tank, GFCI power, etc.) to facilitate the installation of the Product.

1.3 Provider and PAX understand and agree that all Products supplied hereunder are for the dual purposes of: (i) allowing Provider's option of evaluating possible future implementation of the Product at Provider's facilities and (ii) allowing PAX to collect data during testing (including without limitation profile data of chlorine residuals and temperature) for use by both PAX and Provider.

1.4 The scope of the testing is set forth in the said **Exhibit "A"**.

ARTICLE 2 **CARE OF INFORMATION; LIMITED LICENSE;** **INDEMNIFICATION**

2.1 Provider acknowledges and agrees that the Product as a whole and in each of its individual parts is represented by PAX to be confidential, proprietary to, and a trade secret of PAX, that Provider will reasonably protect the Product with the same due care that it protects its own real and personal property to the extent allowed by law, and that Provider will not copy, disclose to third parties or reproduce said Product,

reference materials, case studies, literature, or any portion thereof, or use the Products, reference materials, literature or any portion thereof for any purpose other than the purposes set forth in Section 2.4 below without PAX's prior written consent. Notwithstanding the foregoing or any other provision in this Agreement, the parties recognize that the Provider is a public agency and is subject to the California Public Records Act, Government Code Sections 6250, *et. seq.* ("the PRA"). In no instance will Provider be held liable or responsible in connection with the following:

1. Provider's acts taken to comply with the Public Records Act; or
2. Provider's acts taken to comply with any applicable law or regulation; provided that Provider gives PAX notice of such required disclosure and provides PAX with reasonable opportunity to seek immediate court action to prevent disclosure; notwithstanding the foregoing, Provider will not be obligated herein to violate any deadlines imposed pursuant to or under the PRA or other applicable law.

2.2 Provider shall, at Provider's cost and expense, install and maintain ground fault circuit interruption (gfc) breakers on the power supply lines that supply electric power to the product.

2.3 PAX hereby grants to Provider a limited, non-exclusive right to use the Product for internal evaluation purposes only as authorized in this Agreement. No right is granted to use the Product for commercial or production purposes or in any Product that is marketed or used commercially.

2.4 Provider shall share any collected chlorine profile data or allow PAX to collect profile data at the Tanks in a mutually-agreed procedure (including without limitation profiles of chlorine residuals and temperature variations) and shall grant PAX the right to use such data for evaluation purposes and to share this data with third parties; provided however, that PAX will not disclose the identity of Provider to any third party receiving said data without Provider's prior written consent.

2.5 Provider shall not alter or remove any proprietary marks affixed by PAX to the Product without PAX's prior written consent.

2.6 Subject to Section 2.1 above, Provider shall reasonably protect the Product by using a similar degree of care it uses with respect to its own proprietary information of like importance, but in no event less than reasonable care, to prevent the unauthorized use, disclosure, or publication of the Product.

2.7 At Provider's choice, Provider agrees to either return all Products, along with any copies thereof, or provide PAX with access to Provider's facilities to remove the Products, all within ten (10) working days of the expiration or termination of this Agreement. Notwithstanding the foregoing, if Provider notifies PAX that PAX shall remove all Products from the Tanks, PAX shall be responsible for removing the Product from the Tanks and for restoring the Tanks to their condition that existed at the time when the Product was installed; provided however that PAX shall not be responsible for restoring the Tanks to their original condition insofar as such changes have been made

to the Tanks themselves or any other changes to the Tanks performed by Provider (for examples but without limitation, holes in the tank and GFCI power). After termination of this Agreement and if Provider notifies PAX that PAX shall remove all Products from the Tanks, if PAX has not removed the Product from Provider's Tanks within ten (10) working days, Provider may remove the Product and PAX will immediately remit payment for the reasonable, actual cost of removal of the Product and restoration of the Tanks to their previous condition as limited by the prior sentence.

2.8 Any third party or subcontractor employed by PAX in connection with this Agreement must be pre-approved by Provider. PAX shall remain responsible to Provider for any acts of the third party or damage or injury caused by said third party or subcontractor, which would be indemnified to Provider as if such acts had been performed by PAX itself including, without limitation, pursuant to the INDEMNIFICATION Section of this Agreement.

2.9 Provider shall not copy the Product, nor shall it attempt to disassemble, decipher, reverse engineer, or otherwise determine the Product.

2.10 PAX shall defend, protect, indemnify and hold harmless Provider, its officers, officials, supervisors, directors, employees and agents from and against any third party claim or suit alleging that Provider's use of the Product in compliance with the terms of this Agreement constitutes a violation of such third party's patent, copyright, trademark, trade secrets or other intellectual property rights.

2.11 PAX shall defend, protect, indemnify and hold harmless Provider, its officers, officials, supervisors, directors, employees and agents from and against all claims, demands and causes of action of every kind and character arising in favor of any person including PAX, PAX's employees, Provider's employees, subcontractors or third parties, on account of personal injuries or death or damage to any property in any way incident to or arising out of or claimed to have arisen out of the Product, so long as Provider employs the Product for the purposes and in the manner contemplated by this Agreement; provided further that (i) PAX shall not be obligated to indemnify or hold Provider harmless for harm to an object or person if said object or person enters Provider's Tanks without at least forty-eight (48) hours' notice to PAX, and (ii) PAX shall not be obligated to indemnify or hold Provider harmless if Provider otherwise unreasonably interferes with the intended operation of the Product.

ARTICLE 3

COMPENSATION; OBLIGATIONS; SHIPPING COSTS

3.1 During the term of this Agreement, the Product, along with all associated documentation and deliverables (including the cost of shipping and installation of the Product to Provider's selected Tanks), shall be provided at no charge to Provider. However, without limiting PAX's explicit obligations elsewhere in this Agreement, including, for example, in Sections 2.7, 2.10 and 2.11 above, PAX shall not be responsible for Provider's costs associated with providing PAX access to the Tanks and any supervision or oversight required by Provider's policies.

3.2 PAX shall make reasonable efforts to ensure that the Product is installed and maintained in good working order, at PAX's sole cost and expense, which may include Product replacement, to resolve Product errors or defects encountered during the term of this Agreement. PAX shall disclose any defects, damage, or harm to the Product or caused thereby immediately upon PAX's discovery thereof.

3.3 PAX's currently available and applicable documentation shall be provided to Provider as part of the Product. No special or unique documentation shall be required of PAX, except to the extent described in Exhibit "A" or as mutually agreed to by the parties.

3.4 The Provider's obligations regarding the Product are limited to those acts explicitly set forth in this Agreement. For example, the Provider will be under no further obligation to purchase, use, or endorse the Product.

3.5 At the end of the Testing Period, Provider shall have the option, at Provider's discretion, to purchase the Product at PAX's direct cost (product & installation costs) to manufacture the Product for sale to others; provided however that such test products are sold "as is" and shall carry no warranty. After PAX has received full payment for such Product, PAX will then execute all necessary documentation to transfer the Product and complete said transfer to Provider free and clear from any liens or encumbrances.

ARTICLE 4 **GENERAL PROVISIONS**

4.1 **Property Rights:** Except as set forth in the last two sentences of Section 2.1 of this Agreement, all right, title, and interest to all intellectual property with respect to the Product, including that which may be or become protected by patent, copyright, trademark, trade secret, or similar laws, shall remain exclusively with PAX. No license or other right of any kind is granted by PAX's furnishing the Product to Provider, except for the limited right to use and evaluate the Product as expressly provided for in this Agreement.

4.2 **Assignment:** Neither party may assign or otherwise transfer any rights or obligations under this Agreement without the prior written consent of the other party, provided that either party may assign this Agreement to any successor in a merger or acquisition or the purchaser of all or substantially all of the assets of that party, provided further that PAX may assign its rights and obligations under this Agreement to a subsidiary that owns the Product which is controlled entirely by PAX.

4.3 **Termination:** In the event that either party fails to comply with any material obligations contained in this Agreement, the other party may terminate this Agreement effective immediately upon noncompliant party's receipt of written notice thereof. In addition, either party may terminate this Agreement with or without cause effective upon ten (10) days' prior written notice.

4.4 **Warranty Disclaimer; Limitation of Liabilities:**

PROVIDER ACKNOWLEDGES THAT THE PRODUCT MAY BE PROVIDED IN A PRE-RELEASE STATE AND MAY CONTAIN ERRORS OR INACCURACIES THAT COULD CAUSE FAILURES. WITHOUT LIMITING PAX'S OBLIGATIONS UNDER SECTION 3.2, ABOVE, PROVIDER ACKNOWLEDGES THAT THE PRODUCT IS PROVIDED "AS IS". WITHOUT LIMITING PROVIDER'S EXPRESS RIGHTS SET FORTH ELSEWHERE IN THIS AGREEMENT, PAX MAKES NO WARRANTIES HEREUNDER, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

EXCEPT UNDER THE CONFIDENTIALITY AND INDEMNIFICATION SECTIONS OF THIS AGREEMENT, AND BREACHES OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, IN CONNECTION WITH OR ARISING OUT OF THE PRODUCT.

4.5 **Governing Law:** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to its conflict of law principles.

4.6 **Export Control:** Provider may not use or otherwise export or re-export the Product or any underlying information or technology except in full compliance with all applicable United States export control laws and regulations. PAX shall comply with all export controls in providing the Product to Provider.

4.7 **Notices:** All notices required or permitted hereunder shall be in writing and shall be deemed given when delivered by hand, or facsimile transmission or electronic mail addressed as follows:

If to Provider:

Donald L. Wolfe
Director of Public Works
County of Los Angeles
Department of Public Works
P.O. Box 1460
Alhambra, CA 91802-1460

If to PAX:

PAX Water Technologies, Inc.
1615 5th Avenue
San Rafael, CA 94901
Facsimile: (415) 256-9901

Attn. Jason Oppenheimer
joppenheimer@paxwater.com

4.8 **Entire Agreement:** This Agreement and any exhibits and attachments hereto comprise the entire agreement between Provider and PAX, and there are no agreements, understandings, conditions, warranties or representations, oral or written, express or implied, that are not merged herein or superseded hereby. Amendments to this Agreement shall be valid only if made in writing and signed by the parties.

4.9 **Authority:** Each person signing below represents to have the requisite power and authority sufficient to bind the party on which behalf he or she is executing this Agreement.

IN WITNESS WHEREOF, the undersigned duly authorized representatives of the parties have executed this Agreement on the date or dates indicated below, effective as of the date first above written.

"PAX":

PAX WATER TECHNOLOGIES, INC.
a Delaware corporation

By: 

Name: Brian Kinard

President & CEO

Date: 7/17/06

By: 

Name: Jason Oppenheimer

VP Marketing & Sales

Date: 7/17/06

"Provider":

**Los Angeles County Waterworks District
No. 29, Malibu, and
Los Angeles County Waterworks District
No. 40, Antelope Valley**

By _____

Mayor, Board of Supervisors

ATTEST:

SACHI A. HAMAI
Executive Officer of the
Board of Supervisors of
the County of Los Angeles

By _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By 
Deputy

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Marin

On July 17/06

Date

before me,

Martha Romero, Notary Public

ss.

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally

appeared

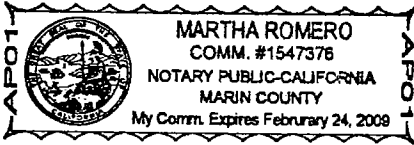
Brian Kinard

Name(s) of Signer(s)

Jason Oppenheimer

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Martha Romero

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Product Testing Agreement

Document Date: July 17/06

Number of Pages: nine

Signer(s) Other Than Named Above: none

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☒ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

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EXHIBIT "A" TO TESTING AGREEMENT

1. ITEMS INCLUDED IN TEST

Listed below are the items transferred to Provider for testing pursuant to this Agreement:

Product Name(s) **PAX Water Technologies Potable Water Submersible Mixer**

LIST OF ALL EQUIPMENT, SOFTWARE, AND DOCUMENTATION PROVIDED:

Mixer assembly (up to four units)
Mixer controller assembly (up to four units)
Assembly/installation drawings
Installation procedures

2. LOCATION FOR THE TESTING

- a) Provider Department or Group: Provider Local Operations _____
- b) Provider Tanks located at: _____
- c) Duration of Testing: 120 Days

3. TECHNICAL CONTACT PERSONS/ NOTICES

The parties respective technical contact persons for the evaluation shall be as follows:

For Provider:

Name: Kenneth Hu
Phone: (626) 300-3384
Facsimile: (626) 300-3385
Email: khu@ladpw.org

For PAX:

Name: Jason Oppenheimer
Phone: 415-847-0819
Facsimile: 415-256-9900
Email: joppenheimer@paxwater.com

4. TESTING RESULTS

The parties seek to accomplish the testing goals listed below. Upon PAX's request, Provider will furnish to PAX Provider's written assessment of how well these goals were satisfied during the testing period.

- a) Ease of use
- b) Effectiveness of Product for purposes intended
- c) Effectiveness of Product compared to potential and actual competitors of PAX (without disclosing any proprietary or confidential information of such competitors)
- d) Database of profiles of freshwater tanks over time as a function of among other things, existing sampling of chlorine residuals, temperature and any other measurable factors of water quality
- e) Effective methods to use the Product to improve the quality of freshwater, including without limitation measurement methods for feedback to the Product for cycle time, rotation speed etc.
- f) Technical barriers
- g) Technical benefits
- h) Any errors or inaccuracies found in the Product